

**WAUKESHA COUNTY BOARD OF ADJUSTMENT
SUMMARY OF MEETING**

The following is a Summary of the Board of Adjustment Meeting held on Wednesday, November 9, 2005, at 6:30 p.m. in Room 255/259 of the Waukesha County Administration Center, 1320 Pewaukee Road, Waukesha County Wisconsin, 53188.

BOARD MEMBERS PRESENT: James Ward, Chairman
Paul Schultz
Walter Tarmann
Walter Schmidt
Ray Dwyer

BOARD MEMBERS ABSENT: Bob Bartholomew

SECRETARY TO THE BOARD: Mary E. Finet

OTHERS PRESENT: Town of Merton Board of Adjustment
Mr. and Mrs. Daniel Mervin, BA05:082, petitioners
Jeff Becker, BA05:085, petitioner
Daniel Wagner, American Transmission Co., BA05:086,
petitioner
Karen Warobick, BA05:083, petitioner
Steve and B.J. Droegkamp, BA05:083, builders
Dennis Barney, BA05:083, friend of the petitioners
Betty Schuh, BA05:083, mother of Mrs. Warobick
Bill and Jane Augustyn, BA05:083, neighbors
Ken and Elaine Redlich, BA05:083, neighbors
Bill and Cindy Nack, BA05:083, neighbors
Chris Dix, BA05:083, neighbor
Robert and Sheryl Kerhin, BA05:087, owners
Lawrence Babb, BA05:087 & BA05:063, builder and petitioner
Joseph Reszka, BA05:087, neighbor
Tony Wineinger

The following is a record of the motions and decisions made by the Board of Adjustment. Detailed minutes of these proceedings are not produced, however, a taped record of the meeting is kept on file in the office of the Waukesha County Department of Parks and Land Use, and a taped copy or transcript is available, at cost, upon request.

SUMMARIES OF PREVIOUS MEETINGS:

Mr. Dwyer *I move to approve the Summary of the Meeting of October 26, 2005.*

The motion was seconded by Mr. Ward and carried with four yes votes. Mr. Tarmann abstained because he was not present at the meeting of October 26, 2005.

NEW BUSINESS:

BA05:082 MR. AND MRS. DANIEL MERVIN

Mr. Schmidt

I move to adopt the staff's recommendation, as stated in the Staff Report, to deny the request from the offset requirement between a principal building and an accessory building and approve the other requested variances and special exceptions, for the reasons set forth in the Staff Report and with the conditions set forth in the Staff Report.

The motion was seconded by Mr. Dwyer and carried unanimously.

The staff's recommendation was for denial of the request for a variance from the offset requirement between a principal building and an accessory building, and approval of the other requested variances and special exceptions, with the following conditions:

1. The proposed covered porch must be reduced in width so that it is at least 10 ft. from the existing detached garage.
2. The gazebo and the proposed covered porch shall not be permanently or temporarily enclosed by any means and a Declaration of Restrictions to that effect must be recorded in the Waukesha County Register of Deeds Office, prior to the issuance of a Zoning Permit.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

Variances require a demonstration that denial of the variances would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. Denial of a variance from the offset requirement of 10 ft. between a principal structure and an accessory building is not unnecessarily burdensome, since only a minor reduction in the width of the proposed porch is needed to conform. However, the Planning and Zoning Division staff believes it would be unnecessarily burdensome not to permit a covered porch at all and to require removal of the existing gazebo.

The gazebo, which conforms with the required 75 ft. shore setback requirement, is located on the previously approved deck and it is no closer to the side lot line or the floodplain than that deck. Since the gazebo is located on the existing deck, it does not increase the amount of impervious surface. Further, the gazebo and the proposed porch have only a minimal impact on the open space, but they greatly enhance the appearance of the property. Neither the existing gazebo nor the proposed porch will adversely affect the river, the lake, or the neighboring properties, and they are not contrary to the public interest. Finally, the recommended condition requiring the recordation of a Declaration of Restriction prohibiting the enclosure of the gazebo or the covered porch will ensure that they will not be permanently or temporarily enclosed. Therefore, the approval of variances from the floodplain setback and open space requirements and the approval of special exceptions from the offset and accessory building floor area ratio requirements, to

permit the existing gazebo to remain and to permit the proposed covered porch, are in conformance with the purpose and intent of the Ordinance.

BA05:085 JEFF BECKER

Mr. Tarmann

I move to approve the request in accordance with the Staff Report, which recommends granting approval of a variance from the open space requirement to permit the construction of an attached garage and also recommends denial of a variance to permit a principal structure to be located less than 10 feet from an accessory structure, with the conditions set forth in the Staff Report and for the reasons set forth in the Staff Report.

The motion was seconded by Mr. Dwyer and carried with four yes votes. Mr. Schmidt voted no.

The staff's recommendation was for denial of the request for a variance to permit a principal structure to be located less than 10 ft. from an accessory structure, denial of the request for a variance to remodel a non-conforming structure in excess of 50% of its fair market value, and approval of the request for a variance from the open space requirement, with the following conditions:

1. Prior to the issuance of a Zoning Permit for the attached garage, a detailed cost estimate must be submitted to the Planning and Zoning Division staff for review and approval.
2. The non-conforming wooden shed must be removed from the property or relocated to a conforming location, no later than six (6) months after the issuance of a Zoning Permit for the attached garage. A conforming location would be at least five (5) ft. from the side and rear lot lines, at least ten (10 ft.) from the residence and the attached garage, and at least fifty-three (53) ft. from the edge of the 30 ft. wide platted road right-of-way.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

Variances require a demonstration that denial of the variances would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. It has not been demonstrated that denial of a variance to permit the attached garage to be less than 10 ft. from the existing shed would be an unnecessary hardship, since the shed could easily be removed or relocated. It does not appear that the proposed attached garage will require a variance to remodel a non-conforming structure in excess of 50% of its fair market value, but if the detailed cost estimate required above indicates that the cost of adding an attached garage will exceed the 50% limit, it is felt that such a significant improvement to a residence located only 3.49 ft. from the north lot line would not be in conformance with the purpose and intent of the Ordinance.

However, a hardship does exist with respect to the requested open space variance. Since the area of the lot is only 8,944 sq. ft., it is impossible to conform with the minimum open space requirement of 10,500 sq. ft. The proposed garage conforms with the offset and setback requirements of the Ordinance and will provide needed additional storage space on the property,

which is necessary because the residence does not have a basement. The proposed decrease to the open space that will result from replacing the carport with the proposed attached garage is minor and will not adversely affect the adjacent properties or the general public. Therefore, the approval of a variance from the open space requirement is in conformance with the purpose and intent of the Ordinance.

BA05:086 AMERICAN TRANSMISSION CO.

Mr. Schultz

I make a motion to approve the request for a variance from the height limitations set forth in the Waukesha County Airport Height Limitation Ordinance to permit the use of a 120 ft. tall temporary crane to be used in the repair or replacement of five transmission structures, subject to the conditions stated in the Staff Report, for the reasons stated in the Staff Report. Since the request for a variance from the height limitations to permit the height of the transmission structure at Site 5 (H4657) to be increased by five (5) ft was withdrawn, no action will be taken on that request.

The motion was seconded by Mr. Tarmann and carried unanimously.

The staff's recommendation was for approval of the request for a variance from the height limitations of the Waukesha County Airport Height Limitation Ordinance to permit the use of a 120 ft. tall temporary crane to be used in the repair or replacement of five transmission structures, subject to the following conditions:

1. The Airport Operations staff of the Waukesha County Airport must be notified at least 72 hours prior to each use of the crane, with the notice to include the exact time and date for each location.
2. Prior to replacement of the transmission structures, a Zoning Permit must be obtained from the Waukesha County Department of Parks and Land Use.
3. All necessary approvals from the State of Wisconsin Department of Transportation - Bureau of Aeronautics and the Federal Aviation Administration (FAA) must be obtained and all conditions of those approvals must be complied with. Prior to the use of the crane and prior to the issuance of a Zoning Permit for replacement of the transmission structures, written evidence of those approvals must be submitted to the Planning and Zoning Division staff of the Waukesha County Department of Parks and Land Use.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The transmission structures are needed to provide a safe and reliable power supply to the community. The approval of a height limitation variance to permit the use of a 120 ft. tall temporary crane, with the recommended conditions, will allow five of those structures to be repaired or replaced, in a manner that will not be a hazard to the safe operation of aircraft. This will protect the people living in the vicinity of the Waukesha County Airport and the aircraft taking off from or landing at the Waukesha County Airport, which is in conformance with the purpose and intent of the Waukesha County Airport Height Limitation Ordinance.

The staff's recommendation was for denial of a variance from the height limitations of the Waukesha County Airport Height Limitation Ordinance to permit the replacement of the transmission structure located at Site 5 (Structure H4657) with a new structure that will be five (5) ft. higher.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

It has not be demonstrated, as required for a variance, that a literal enforcement of the Ordinance would result in unnecessary hardship and that the proposed higher transmission structure is in the public interest and would not create a hazard to the safe operation of aircraft. If the petitioner is able to demonstrate that the proposed higher transmission structure is in the public interest and would not create a hazard to the safe operation of aircraft and if evidence can be presented that the Waukesha County Airport Commission supports the proposed higher transmission structure, this matter may be brought back for re-consideration as "Old Business", without the necessity of further public notice or the payment of an additional fee.

BA05:083 RANDY AND KAREN WAROBICK

Mr. Schultz

I make a motion to adopt the staff's recommendation, as stated in the Staff Report, with the following modifications:

Condition No. 4 shall be modified to read "A new residence with an attached garage may be constructed on the east side of Silver Spring Lane, but in order to maximize the floodplain setback, it must be located 20 ft. from the edge of the private road right-of-way of Silver Spring Lane. In addition, the new residence, including all appurtenances such as patio or decks, must be located at least 7 ft. from the 100-year floodplain."

The recommended Condition No. 5 shall be replaced with a new Condition No. 5 stating that "The first floor of the residence must be at least 900 sq. ft., which will be in conformance with the minimum required first floor area, under the Town of Merton Zoning Ordinance."

Condition No 11 shall be modified to read "The area around the residence may be backfilled if necessary, but the fill may not be more than one foot deep and no fill may be placed within the 100-year floodplain. The finished grades may not result in adverse drainage on the adjacent properties and no retaining walls will be permitted."

The other conditions shall be as recommended in the Staff Report. The reasons for this decision are as set forth in the Staff Report.

The motion was seconded by Mr. Ward and carried unanimously.

The staff's recommendation was for denial of the request for an offset variance and approval of the request for a floodplain setback variance, with the following conditions:

1. Prior to the issuance of a Zoning Permit, the pending Certified Survey Map, which will combine the two legal lots of record into one lot, must be recorded in the Waukesha County Register of Deed's office.
2. The proposed residence must be at least 10 ft. from the side lot lines, as measured to the outer edges of the walls (including any fireplace bump-outs, chimneys, bay windows, etc.), with overhangs not exceeding two (2) ft. in width. Any proposed patios and/or decks must be at least 6 ft. from the side lot lines.
3. A new detached garage may be permitted on the west side of Silver Spring Lane, provided both existing detached garages are removed and the new detached garage conforms with the Ordinance requirements regarding offset, private road setback, building height, overall floor area ratio, and accessory building floor area ratio.
4. In order to maximize the floodplain setback, a new residence on the east side of Silver Spring Lane may not have an attached garage and it must be located 20 ft. from the edge of the private road right-of-way of Silver Spring Lane. The maximum depth of the new residence, including any appurtenances such as patios or decks, shall not exceed 32 ft. This will result in a floodplain setback of approximately 35 ft. on the lake side and approximately 7 ft. on the south side.
5. The footprint of the new residence, including any proposed covered porches, shall not exceed 960 sq. ft.
6. The total floor area of all buildings on the property shall not exceed 15% of the lot area. This will permit a total floor area of 3,662 sq. ft.
7. The new residence may not have a full basement. It may have a crawl space, provided the floor of the crawl space is at or above the 100-year flood elevation of 899.9 ft. above mean sea level.
8. The first floor of the new residence must be at or above the flood protection elevation of 901.9 ft. above mean sea level.
9. Prior to the issuance of a Zoning Permit, a complete set of plans for the proposed new residence and detached garage, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.
10. Prior to the issuance of a Zoning Permit, a stake-out survey showing the location of all proposed structures, including any appurtenances such as patios or decks, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
11. The area around the residence may be backfilled if necessary, but the fill may not be more than one foot deep and no fill may be placed within the 100-year floodplain. The finished grades may not result in adverse drainage on the adjacent properties.
12. In order to ensure the construction of a new residence and detached garage does not result in adverse drainage onto adjacent properties, a detailed grading and drainage plan, showing existing and proposed grades, must be prepared by a registered landscape architect, surveyor,

or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a Zoning Permit. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. The following information must also be submitted along with the grading and drainage plan: a timetable for completion, the source and type of fill, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage. This grading plan may be combined with the Plat of Survey required in Condition No. 10.

13. Prior to the issuance of a Zoning Permit, the Environmental Health Division must certify that the existing septic system is adequate for the proposed construction, or a Sanitary Permit for a new waste disposal system must be issued and a copy furnished to the Planning and Zoning Division staff.
14. Prior to the issuance of a Zoning Permit for a new residence, the non-conforming shed near the lake and the adjacent concrete patio must be removed.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

Variances require a demonstration that denial of the variances would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. It has not been demonstrated that denial of the requested offset variance would be an unnecessary hardship, since a new residence could be designed to conform with the offset requirement. Therefore, the approval of an offset variance would not be in conformance with the purpose and intent of the Ordinance.

It is felt that it would be unnecessarily burdensome not to grant some relief from the floodplain setback requirement, which is necessary in order to permit the existing cottage on the east side of Silver Spring Lane to be replaced with a new residence on the east side of Silver Spring Lane. However, variances should be granted only to provide the minimum relief necessary for a reasonable use of the property. The approval of a floodplain setback variance, with the recommended modifications and conditions, will allow the construction of a new residence farther from the floodplain and with a footprint only slightly larger than the existing cottage. This will minimize the impact on the lake, the floodplain and on the adjacent properties. As recommended, the new residence will be approximately the same size as the adjacent residence to the south, except that it will not have an attached garage. Although an attached garage may be a desirable amenity, there is ample room on the west side of Silver Spring Lane to accommodate a detached garage. Given the small area between the floodplain and Silver Spring Lane, it is felt that the approval of a floodplain setback variance that would permit an attached garage would be contrary to the public interest and not in conformance with the purpose and intent of the Ordinance. Therefore, the approval of a floodplain setback variance, with the recommended modifications and conditions, is in conformance with the purpose and intent of the Ordinance.

BA05:087 ROBERT AND SHERYL KERHIN (Owners)
Lawrence Babb (Builder and Petitioner)

Mr. Dwyer

I move to deny the request to construct a boathouse in the 100-year floodplain, but approve the request for a variance from the requirement that a boathouse may not be constructed on a lot with an average width of less than 100 ft., subject to the following condition:

The new boathouse must be located outside of the 100-year floodplain.

The reasons for approval are because this is a replacement of an existing boathouse and the location of the 100-year floodplain prevents the boathouse from being located closer to the lake.

The motion was seconded by Mr. Schultz and carried with three yes votes. Mr. Tarmann and Mr. Ward voted no.

The staff's recommendation was for denial.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

It has not been demonstrated, as required for a variance, that denial of the requested variances would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. Denial of the requested variances will not prevent the property from being used for the permitted purpose of single-family residential use and it is not unnecessarily burdensome not to permit the construction of a new boathouse.

Boathouses are not necessary for reasonable use of a property. Further, it is not in conformance with the purpose and intent of the Ordinance to permit the replacement of non-conforming structures or to allow new structures to be constructed within the 100-year floodplain. Amendments to the Waukesha County Shoreland and Floodland Protection Ordinance, which became effective in December of 2004, require that boathouses be located outside of the 100-year floodplain and prohibit boathouses on lots less than 15,000 sq. ft. in area or on lots with an average width of less than 100 ft. The intent of these amendments was to prohibit new boathouses in the floodplain so as not to reduce the flood storage capacity and also to restrict the proliferation of boathouses on small narrow lots because boathouses have a negative impact on water quality and shoreline aesthetics. Therefore, the approval of this request would be contrary to the public interest and not in conformance with the purpose and intent of the Ordinance.

OTHER ITEMS REQUIRING BOARD ACTION:

BA05:063 ROGER ABDIN (Owner)
Lawrence Babb (Builder and Petitioner)

Mr. Tarmann

I move to reconsider Condition No. 1 of our approval of August 24, 2005.

The motion was seconded by Mr. Schmidt and carried unanimously.

Mr. Ward

I move to revise Condition No. 1 to read as follows:

“Prior to the issuance of a Zoning Permit, the boathouse and the lower deck (the one along the shoreline) must be removed from the property, excepting those portions of the south and west walls of the boathouse that are needed as retaining walls, which may remain. The remainder of the boathouse structure must be removed and only those portions of the south and the west walls of the boathouse that function as retaining walls may remain. The remaining portion of the south wall of the boathouse shall architecturally complement the other portion of the retaining wall and the remaining portion of the west wall of the boathouse shall parallel the grade along the west lot line. A plan indicating how the south and west walls of the boathouse will be re-configured into retaining walls must be submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a Zoning Permit. A plan for shoreline restoration and revegetation in that area between the shoreline and the retaining wall must also be submitted to Planning & Zoning Division staff for review and approval, prior to the issuance of Zoning Permit. The revegetation plan shall address stabilization of the shoreline area and also screening of the “wall” of the upper deck, the west wall, and the south wall from the Lake. The privacy fence shall either be removed or modified to follow the grade line of the retaining wall to be formed from the west wall of the boathouse.”

The motion was seconded by Mr. Schultz and carried unanimously.

ADJOURNMENT:

Mr. Schmidt

I move to adjourn this meeting at 9:50 p.m.

The motion was seconded by Mr. Schultz and carried unanimously.

Respectfully submitted,

Mary E. Finet
Secretary, Board of Adjustment